

**OCT 28 2005**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

GONZALO ACUNA,

Petitioner - Appellant,

v.

C. A. TERHUNE,

Respondent - Appellee.

No. 04-15719

D.C. No. CV-99-02137-DFL/GGH

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Eastern District of California  
David F. Levi, District Judge, Presiding

Submitted October 20, 2005<sup>\*\*</sup>  
San Francisco, California

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

**1.** The state court's ruling denying the motion for continuance was not contrary to clearly established federal law, as determined by the Supreme Court. *See Morris*

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*v. Slappy*, 461 U.S. 1, 11 (1983) (describing the broad discretion granted to trial court rulings on requests for continuances).

2. The record does not reflect that any deficiencies in trial counsel's performance prejudiced Petitioner Gonzalo Acuna given the overwhelming evidence against him. *See Strickland v. Washington*, 466 U.S. 668, 692 (1984) (“[A]ny deficiencies in counsel’s performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution.”). Therefore, the state court’s denial of Acuna’s ineffective assistance of counsel claim was not unreasonable.

**AFFIRMED.**